

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

10-CR-6058CJS

-v-

DAVID RODRIGUEZ,

Defendant.

**STATEMENT OF THE GOVERNMENT WITH RESPECT
TO SENTENCING FACTORS**

PLEASE TAKE NOTICE, that the government adopts the findings of the revised Presentence Report ("PSR") with respect to sentencing factors in this case.

The Guidelines calculation in the PSR is different than in the Plea Agreement. The PSR determined that the defendant's Criminal History Category (CHC) was V, as opposed to CHC IV that was contemplated in the plea agreement. PSR, ¶70. This difference appears to be based on the single criminal history point assessed for the defendant's March 26, 2003 conviction for AUO 3rd. This conviction was not included in the criminal history reports available to the government, nor set forth in the criminal history section of the pretrial services report. Accordingly, as this conviction constitutes previously unknown information, and pursuant to Paragraph 15(c) of the Plea Agreement, the government adopts CHC

V. Under Criminal History Category V, the resultant Guideline range for imprisonment is 168 to 210 months. PSR, ¶73. The government is aware that, but for a downward departure motion, it would be bound to advocate, pursuant to Paragraph 11 of the Plea Agreement, for a sentence of 180 months. In any event, the government has filed a downward departure motion.

MOTION PURSUANT TO U.S.S.G. §3E1.1(b)

Upon the ground that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, the government hereby moves the Court to apply the additional one (1) level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. §3E1.1(b).

Should the defendant present any letters of support or sentencing statement to the Court, the United States will move to strike the items from the record if this office is not provided with copies at least three business days prior to sentencing.

The defendant is required by 18 U.S.C. §3013 to pay the sum of \$ 100 at the time of sentencing.

In the event present counsel for the defendant will continue to represent the defendant after sentencing in regard to the collection of unpaid financial obligation(s), it is requested that a letter so advising be sent to:

Asset Forfeiture/Financial Litigation Unit
U.S. Attorney's Office--WDNY
138 Delaware Avenue
Buffalo, New York 14202

If a letter is not received within 10 days of sentencing, the defendant will be directly contacted regarding collection of the financial obligation(s).

DATED: Rochester, New York, January 24, 2012.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.
United States Attorney

BY: s/Robert A. Marangola
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TO: Matthew D. Nafus, Esq.
Kerry J. Chartier, USPO

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2012, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

1. Matthew D. Nafus, Esq.

s/Lori Pietrzykowski
LORI PIETRZYKOWSKI